

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1183/Hyd/2017	2009-10	Assistant Commissioner of Income Tax, Circle-9(1), Hyderabad	Smt. A. Bharathi, Hyderabad [PAN: AHQPA5814M]
1184/Hyd/2017	2010-11		

निर्धारिती द्वारा/Assessee by: Shri S.K. Gupta, AR
राजस्व द्वारा/Revenue by: Shri A.P.Babu, DR

सुनवाई की तारीख/Date of hearing: 04/10/2022
घोषणा की तारीख/Pronouncement on: 27/10/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order(s) passed by the Learned Commissioner of Income Tax (Appeals)-7, Hyderabad ("Ld. CIT(A)") in the case of Smt. A.Bharathi ("the assessee") for the assessment years 2009-10 & 2010-11, Revenue filed these appeals. Since the grounds and question of fact and law are identical in both the appeals, we dispose of these appeals by way of this common order, taking the appeal in ITA No. 1183/Hyd/2017 as a lead case.

2. Brief facts of the case are that the assessee is an individual, deriving income from money lending, other sources and agriculture. There was a search and seizure operation conducted on 2/9/2010 and pursuant to a notice under section 153A of the Income Tax Act, 1961 (for short "the Act"), the assessee filed the return of income declaring the total income of Rs. 37,68,990/- besides agricultural income of Rs. 10,12,500/-. According to the assessee, the sources of income are remittance from her son, who is in USA, agricultural income apart from interest from money lending. Prior to that the assessee never filed the return of income. During the course of assessment proceedings, learned Assessing Officer called for the details in respect of certain cash deposits in bank, interest income, amount advanced to some persons, interest on such amount advanced etc.

3. basing on the information furnished by the assessee and also on the documents seized from the residence of the assessee, learned Assessing Officer made certain additions and disallowances, and determined the total income of the assessee at Rs. 3,57,67,320/-.

4. Aggrieved by such an action of the learned Assessing Officer, assessee preferred an appeal before the Ld. CIT(A) and submitted that during the assessment proceedings, opportunity was not given to her to explain the entries in seized material and investments made by preparing "cash flow/funds flow" statements. Accordingly assessee filed additional evidence by way of cash flow statements prepared basing on the seized material, bank account entries and agricultural income.

5. Ld. CIT(A) admitted the additional evidence and by way of letter dated 9/12/2013 called for the remand report from the learned Assessing Officer. Learned Assessing Officer furnished the remand report dated 1/3/2016, after examining the cash flow statement of the assessee, but the learned Assessing Officer redrawn the cash statement making certain charges/correction on account of certain deficiencies noted by him and finalised the remand report. The Additional Commissioner of Income Tax

in the forwarding letter dated 15/3/2016 raised certain objections vis-à-vis the acceptability of the cash/fund flow statement by pointing out certain omissions and commissions in the statements prepared and submitted by the assessee and the learned Assessing Officer.

6. When the assessee was confronted with the remand report and the comments offered by the Additional Commissioner of Income Tax, the assessee again redrew the cash flow statement and explained why the cash flow statements should be accepted, by making certain changes in the cash flow on account of deficiencies pointed out by the learned Assessing Officer and also the comments of the Additional Commissioner of Income Tax. Ld. CIT(A) took cognizance of the cash flow statements filed by the assessee and the learned Assessing Officer and also the cash flow statement prepared by the assessee subsequent to the remand report and after making certain changes to such statement, proceeded to deal with the additions and deleted the major portion of the addition.

7. Revenue is aggrieved by such an act of the Ld. CIT(A) and filed this appeal stating that the Ld. CIT(A) failed to take into consideration the submissions made by the learned Assessing Officer in the remand report and also the seized material Annexures basing on which the additions were made by the learned Assessing Officer. Ld. DR submitted that in the cash/funds statements were originally furnished by the assessee, there were no dates and the Ld. CIT(A) failed to consider the timing factor, which is very important while examining the source because if a wrong date is taken for a particular source of income that would have the cascading effect to explain investments, which were otherwise not possible and point out only to the unexplained income. For the cash flow drawn by the assessee there is no material basis at all and more particularly the Ld. CIT(A) failed to obtain the views of the learned Assessing Officer on the revised cash flow furnished by the assessee subsequent to the remand report and cash flow drawn by the learned Assessing Officer. He further submitted that absolutely there is no material on record to support the

opening balance, domestic withdrawals etc., stated by the assessee and relied upon by the Ld. CIT(A).

8. Per contra, it is submitted on behalf of the assessee that the Ld. CIT(A) considered the cash flow statement prepared by the assessee in the light of the remand report of the learned Assessing Officer and the comments offered by the Additional Commissioner of Income Tax and therefore, when the remand report along with the redrawn cash/fund flow statement prepared by the learned Assessing Officer, comments offered by the Additional Commissioner of Income Tax and the cash/fund flow statement revised by the assessee in tune with the view taken by the learned Assessing Officer and the Additional Commissioner of Income Tax, there is nothing wrong in the Ld. CIT(A) appreciating all this material to reach a just conclusion. According to the Ld. AR all the additions are properly deleted by the Ld. CIT(A) basing on the material available on record and believing the sources of income declared by the assessee and therefore, no interference is warranted in this matter.

9. We have gone through the record in the light of the submissions made on either side. Case of the assessee before the Ld. CIT(A) was that being a housewife, she has entrusted the entire work of lending, receiving interest and investments in chits to Sh. A. Narasimha Reddy and she was advancing funds to him for short periods free of interest for such work. Since the learned Assessing Officer did not allow her sufficient opportunity to file detailed reply to the show cause notice, she could not analyse the material and file the cash flow statement explaining the deposits in bank etc.

10. It is an admitted fact that the assessee has not been maintaining any day-to-day books of accounts more particularly day-to-day cash book. However, she prepared the cash flow statement without the maintenance of the day-to-day cash book and stated that such cash flow statement was prepared by following the accounting principles which are followed in

preparation of cash book by incorporating all the receipts and income on inflow side of the cash flow statement and all payments, expenses and investments (otherwise than banking channels) recorded on the outflow side. Further according to the assessee she has taken minutest care to the extent possible in preparation of the cash flow statement and resources were available for advancing the amounts as there are sufficient funds available at the disposal of the assessee. Apart from this, statement was that the agricultural income was also received by her throughout the year as the crops grown are different in nature and the assessee used to sell the crops at regular intervals.

11. Mere statement of the assessee is not enough for the verification of the truthfulness or otherwise of such statement. In response to the notice under section 153A of the Act, assessee filed the return of income on 8/3/2013 declaring an income of Rs. 37,68,990/- besides the agricultural income of Rs. 10,12,500/-. It is not known why the assessee did not file the return of income when her total income was Rs. 37,68,990/- other than the agricultural income of Rs. 10,12,500/-. This itself shows that the assessee was not sure about her income and the need to file the return of income. Further even according to her, being a housewife, she was not managing her money matters personally and entrusted the same to one Narasimha Reddy by advancing funds to him for short periods free of interest for such work. We do not know what exactly the material processed by the Narasimha Reddy and furnished to the assessee. Unfortunately, neither of the parties filed the cash/fund flow statement prepared by the assessee to compare the same with the cash/fund flow redrawn by the learned Assessing Officer, in the light of the comments offered by the Additional Commissioner of Income Tax.

12. A perusal of the remand report prepared by the learned Assessing Officer on 1/3/2016 establishes that the learned Assessing Officer had taken the payments to prepare it in a very detailed manner with reference to the material that was seized during the search and seizure operations.

At this juncture, it is pertinent to refer to the comments offered by the Additional Commissioner of Income Tax, in unequivocal terms, and relevant comments read that,-

It may be noted that day to day books of account are reliable way of examining the source of investment/ expenditure. Cash flow or fund flow statement for the entire year has inherent deficiencies. Timing difference, which is a very important issue for examining the source, is totally sidelined. For example, loan may have been advanced in June but agricultural income would have been received in August. Therefore, agricultural income cannot be source for the loan advanced. However, if cash flow/fund flow for the entire year is accepted, then we are accepting agricultural income as source for the loan advanced. Similarly, some assumptions are made. For example, opening balance, domestic withdrawals etc., Considering these aspects, CIT (A) is requested to decide on merits whether to accept fund flow as evidence to explain the sources for investments /loans j/expenditure.

Further, it may be noted that for the AY 2005-06, assessee has claimed opening balance of Rs.5,00,000/-. There is no basis for the said claim of opening balance.

The domestic drawings claimed by the assessee are as under:

AY	AMOUNT
2005-06	45000
2006-07	24000
2007-08	30000
2008-09	60000
2009-10	240000
2010-11	300000
2011-12	325000

Further, in the fund flow statement prepared by the Assessing Officer for AY 2009-10,2010-11 and 2011-12, drawings claimed by the assessee are not considered as outflow by mistake. If taken, the cash availability would reduce. Therefore, this issue may be considered while deciding the matter. In the fund flow statement prepared by the Assessing Officer for AY 2007-08 and 2008-09, the AO arrived at higher interest income and allowed the same as source. The interest income declared by the assessee for the said years are Rs.75,000 and 53,4000 respectively whereas according to the AO, the interest income should have been Rs.97,500 and Rs.270000

respectively. Since the enhanced amount is allowed as source, the difference of Rs.22,500 and Rs.2,16,600 should be treated as additional interest income for AY 2007-08 and 2008-09 respectively.

13. The caution given by the additional Commissioner of Income Tax sounds wise. Ld. CIT(A) recorded that when the remand report and the comments of the additional Commissioner of Income Tax were confronted to the assessee, assessee stated that she had taken all the precautions necessary to prepare the cash book and therefore, such meticulously prepared cash flow statement has to be accepted. Apart from stating so, Ld. CIT(A) further recorded that the assessee made some changes and filed a revised cash flow statement. Instead of calling for the remarks of the learned Assessing Officer on this aspect, Ld. CIT(A) proceeded to observe that the operation of the additional Commissioner of Income Tax were addressed by the assessee by incorporating all available dates, interest receipt taken at the end of every quarter and agricultural income taken on half yearly basis and therefore it gives nearly accurate picture of the offence of the assessee. Precisely the Revenue is questioning in this appeal the basis for this statement made by the Ld. CIT(A) recorded in the absence of the learned Assessing Officer.

14. When the assessee herself on one hand states that she is a housewife and she entrusted all the work of lending, receiving interest and investments in chits to Sh. Narasimha Reddy and she was advancing funds to him for short periods free of interest for such work, the Ld. CIT(A) should have taken little more care to know the meticulous basis for the entries made by the assessee in the cash/funds flow statement. Grievance of the Revenue is that in the original cash flow statement furnished by the assessee by way of additional evidence, there were no dates at all, but subsequently the assessee made the changes, perhaps to suit the convenience. Unfortunately either the original or the revised cash flow statement furnished by the assessee is not to be found on record and none of the parties thought it fit to file the same. And the Ld. CIT(A) committed

an error in not calling the attention of the learned Assessing Officer to such a revised cash flow statement, more particularly in the light of the redrawn cash flow statement by the learned Assessing Officer and the word of caution sounded by the additional Commissioner of Income Tax.

15. In the set of circumstances, we are of the considered opinion that the revised cash/funds flow statement furnished by the assessee subsequent to the remand report should have been furnished to the learned Assessing Officer to offer his remarks. We are also of the considered opinion that there is no basis for the observations of the Ld. CIT(A) that “the apprehension of the additional Commissioner of Income Tax Haugen addressed by incorporating all available dates, interest receipt taken at the end of every quarter and agricultural income taken on half yearly basis would give nearly accurate picture of affairs of the assessee”. When the Ld. CIT(A) thought it necessary to confront the remand report and the comments of the additional Commissioner of income tax to the assessee, in all fairness, Ld. CIT(A) should have complied with the requirement of principles of natural justice, by furnishing a copy of such revised the cash/funds flow statement of the assessee to the learned Assessing Officer giving him an opportunity to offer his remarks. This is more particularly in view of the fact that the additional Commissioner of Income Tax clearly stated that timing difference, which is a very important issue for examining the source, is totally side-lined in the matter. In the situation, without the help of the correct cash/funds flow statement, is not possible to appreciate the legality or otherwise of the impugned regulations.

16. As held by the Hon’ble High Court in the case of PCIT Vs. G. Mahesh Babu in ITTA No. 208/2016 by order dated 6/1/2017, whenever an order is vitiated for non-compliance with the principles of natural justice, the order should be set aside and the matter remitted back to the same authority, unless the original authority had lost its direction in the meantime, and the powers of the Income Tax appellate Tribunal to pass

an order of remand are not in doubt not in dispute. Respectfully following the same, we set aside the impugned order and restored the issue to the file of the Ld. CIT(A) to comply with the requirement of confronting the 'revised cash/funds flow statement' to the learned Assessing Officer inviting his remarks/comments and to take a view in accordance with law. Grounds of appeal of the Revenue are accordingly allowed for statistical purpose.

17. Since the facts of ITA No. 1184/Hyd/2017 for the assessment year 2010-11 are identical to one as decided by us in ITA No. 1183/Hyd/2017 for the assessment year 2009-10 (supra) and, therefore, our findings in the said appeal, *mutatis mutandis*, would apply to this appeal as well. Hence, grounds of this appeal of Revenue are also treated as allowed for statistical purposes.

18. In the result, both the appeals of Revenue are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 27th day of October, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 27/10/2022

TNMM

Copy forwarded to:

1. The Asst. Commissioner of Income Tax, Circle-9(1), Hyderabad.
2. Smt. A. Bharathi, Flat No. 409, Himasai Poojitha Apartments, A-Block, Behind White House, Kothapet, Hyderabad.
3. The CIT(A)-7, Hyderabad.
4. The Pr.CIT-7, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD